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JAN 25 2006

OFFICE OF PETITIONS

In re Application of
Vincent Riemma
Application No. 10/615,577
Filed: July 8, 2003
Attorney Docket No. N/A

ON PETITION

This is a decision on the request for reconsideration of petition under 37 CFR 1.181, filed March 21, 2005, to withdraw the holding of abandonment. The petition was recently forwarded to this office for consideration.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Request For Reconsideration of Petition under 37 CFR 1.181."

This application became abandoned for failure to timely reply to the non-final Office action mailed February 12, 2004, which set a one (1) month period for response. Accordingly, this application became abandoned on March 13, 2004. A Notice of Abandonment was mailed on September 8, 2004.

Petitioner contends a timely response was submitted to the Office on February 27, 2004, via USPS Express Mail service. In support, the petition is accompanied by a copy of the Express Mail mailing label (#ER710955770US) that indicates a "date-in" of February 27, 2004, and a copy of the papers purportedly deposited on that date.

37 CFR 1.10(e) states:

Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day;
- (4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

After careful review, it is found that the instant petition does not satisfy the requirements of 37 CFR 1.10(e)(2). The number of the "Express Mail" mailing label is not found on the "COPY of Original Response sent late February 2004." As such, it is impossible to connect the "COPY of Original Response sent late February 2004" with Express Mail mailing label (#ER710955770US).

Accordingly, the petition must be dismissed.

Please note, the Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. *See* MPEP 503.

Petitioner should consider filing a petition to revive an abandoned application under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 Box 1450
 Alexandria, VA 22313

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at
(571) 272-3228.

A handwritten signature in black ink, appearing to read 'E. J. Tannouse', followed by a horizontal line extending to the right.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy